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In the Supreme Court of the State of California

COUNTY OF SAN DIEGO; COUNTY OF LOS ANGELES; COUNTY OF ORANGE; COUNTY OF SACRAMENTO; and COUNTY OF SAN BERNARDINO,

Plaintiffs and Appellants,

v.

COMMISSION ON STATE MANDATES; STATE OF CALIFORNIA; DEPARTMENT OF FINANCE FOR THE STATE OF CALIFORNIA; JOHN CHIANG in his official capacity as California State Controller,

Defendants and Respondents.

Case No.

Fourth Appellate District, Division One, Case No. D068657
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL
Honorable Richard E. L. Strauss, Judge Presiding

PETITION FOR REVIEW

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PETITION FOR REVIEW

Defendants and Respondents the Department of Finance for the State of California, the California State Controller, and the State of California, respectfully petition this Court for review of the published decision of the Fourth District Court of Appeal, Division One, in *County of San Diego v. Commission on State Mandates* (Dec. 28, 2016, D068657) 7 Cal.App.5th 12.[1] The slip opinion is attached as Exhibit A. The Court of Appeal filed the decision on December 28, 2016. This petition for review is timely. (Cal. Rules of Court, rule 8.500(e)(1).)

ISSUES PRESENTED

When the Commission on State Mandates determines that the Legislature has mandated a new program or higher level of service on any local government, the California Constitution requires the State to reimburse the local government for the costs of complying with that statutory mandate. A statute does not create a state mandate, however, if it imposes duties that are necessary to implement, or that are expressly included in, a ballot measure approved by the voters. (See Gov. Code, § 17556, subd. (f).) When the State's responsibility for the costs of a statutory mandate is modified by a subsequent change in law, such as a voter initiative, the Commission on State Mandates is authorized to issue a decision directing that the State is no longer required to pay those costs. (*Id.*, § 17570, subd. (b).) In this case, the Court of Appeal adopted a "narrow construction" of Government Code sections 17556, subdivision (f) and 17570, holding that a voter initiative that modifies a statute previously

[1] At the time Plaintiffs and Appellants filed the underlying complaint, John Chiang held the Office of California State Controller. Betty Yee, having been duly elected on November 4, 2014, now holds that Office. Counsel of record for the former Controller and present Controller remains the same.

found to impose a state mandate does not change the State's financial responsibility for the mandate unless it "changes the duties imposed by the statutes." (Slip opn., p. 25.) The issues presented in this case are:

(1) Whether the rule adopted by the Court of Appeal, which focuses exclusively on whether a voter initiative modifies the language of the statutory section or subdivision that imposes a statutory mandate, and does not allow consideration of other ways in which an initiative may modify the scope, nature, or source of that mandate, complies with the Government Code and the Constitution.

(2) Whether and to what extent the State remains responsible for the costs of duties imposed on local government by the Sexually Violent Predators Act, which the voters amended and partially re-enacted when they approved Proposition 83.

INTRODUCTION

The first principle of state mandates law is that the State is responsible for reimbursing local government for the costs of statutory duties only if the duties are mandated by "the Legislature or any state agency." (Cal. Const., art. XIIIB, § 6, subd. (a).) The State's responsibility "for mandated costs does not include ballot measure mandates." (*California School Board Assn. v. California* (2009) 171 Cal.App.4th 1183, 1206.) And even if the State was once determined to be responsible for the costs of a statutory duty, it is no longer financially responsible if that duty is necessary to implement, or expressly included in, a subsequent ballot initiative approved by the voters. (Gov. Code, §§ 17556, subd. (f), 17570, subd. (b).) This Court should grant review to resolve the important question of how to determine whether a voter initiative has shifted responsibility for the costs of a statutory mandate from the State to local governments.

Definitive guidance from this Court on that question would assist the Commission on State Mandates and the lower courts in adjudicating

disputes over how properly to allocate the costs associated with statutory mandates. Those disputes can have profound consequences for state and local budgets—as in this case, where the controversy centers on duties imposed by the Sexually Violent Predators Act that collectively cost more than $20 million per year. This Court's guidance would also assist the voters, and state and local governments, by facilitating an accurate understanding of the fiscal consequences of proposed initiatives.

Review is particularly important because the Court of Appeal's published opinion adopted a new rule that is at odds with the Government Code and basic principles of state mandates law. That rule focuses exclusively on whether the voter initiative has modified the language of the specific statutory section or subdivision that imposes the mandate. It does not allow for consideration of other ways in which an initiative may alter the State's financial responsibility for the mandate, such as by making changes that transform the nature of the duty, including changes in the surrounding statutory framework that render the duty "necessary to implement" the initiative. (Gov. Code, § 17556, subd. (f).) Absent review by this Court, the Court of Appeal's rule threatens to create confusion and mischief in this consequential area of the law.

LEGAL BACKGROUND

I. LAW ON STATE MANDATES

The State is obligated to reimburse local government for the costs of a program or increased level of service "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government." (Cal. Const., art. XIIIB, § 6, subd. (a); see Gov. Code, § 17514.) The Government Code implements this constitutional requirement. (See Gov. Code, § 17500 et seq.) Among other things, it directs that certain categories of costs are "not . . . mandated by the state," including costs associated with federal law and statutory "duties that are

necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election." (*Id.*, § 17556, subd. (f).) That exception "applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters." (*Ibid.*)

The Commission on State Mandates was created by statute in 1984. (See Gov. Code, § 17500.) The Commission is authorized to decide whether a statute imposes a "state-mandated" cost on local governments within the meaning of the Constitution and the Government Code. (*Id.*, § 17551, subd. (a).) Local agencies must file a test claim with the Commission to establish that they are entitled to reimbursement for such a cost. (See *ibid.*) If the Commission decides that a statute creates a state mandate, the Legislature may either appropriate funds to reimburse the affected local agencies for the costs of the mandate, or suspend operation of the mandate for that fiscal year. (See Cal. Const., art. XIIIB, § 6, subd. (b)(1).)

In 2010, the Legislature enacted a statute authorizing the Commission to "adopt a new test claim decision to supersede a previously adopted test claim decision . . . upon a showing that the state's liability for that test claim decision . . . has been modified based on a subsequent change in law." (Gov. Code, § 17570, subd. (b).) The term "subsequent change in law" is defined, in relevant part, as "a change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556 . . . ." (*Id.*, § 17570, subd. (a)(2).)

II. THE SEXUALLY VIOLENT PREDATORS ACT

The Legislature originally enacted the statutes commonly referred to as the Sexually Violent Predators Act (SVPA) in the mid-1990s. (See Welf. & Inst. Code, § 6600 et seq.; Stats. 1995, ch. 762-763; Stats. 1996,

ch. 4.) The SVPA establishes procedures for the screening, evaluation, commitment, and detention of certain offenders following the completion of their prison terms. Welfare and Institutions Code section 6600 defines the term "sexually violent predator." (Welf. & Inst. Code, § 6600, subd. (a)(1).) If the Department of Corrections and Rehabilitation determines that an inmate may qualify as a sexually violent predator, that person generally must be screened at least six months before the scheduled release date. (*Id.*, § 6601, subds. (a)-(b).) Inmates who are "likely to be a sexually violent predator" must be referred to the Department of State Hospitals for a full evaluation of whether they meet the statutory definition of sexually violent predator. (See *id.*, § 6601, subds. (b)-(h).) If that Department determines that a person meets the statutory definition, the Director of State Hospitals must "forward a request for a petition to be filed for commitment" to the appropriate county. (*Id.*, § 6601, subd. (h)(1).) County officials are then responsible for a variety of duties in connection with that person, such as reviewing records to determine if the county concurs with the recommendation for commitment, preparing and filing the civil commitment petition, attending the probable cause hearing and civil commitment trial, and participating in future hearings regarding the condition of offenders who have been committed. (See, e.g., *id.*, §§ 6601, subd. (i), 6602-6604.)

In 1998, the County of Los Angeles filed a test claim with the Commission seeking reimbursement for costs it incurs in complying with requirements of the SVPA. The Commission decided that the SVPA imposed eight duties on counties that were state-mandated and therefore

reimbursable. (See AR 3; slip opn., pp. 8-9.)[2] Those duties included, for example, "[p]reparation and attendance by the county's designated counsel and indigent defense counsel at the probable cause hearing," at the "civil commitment trial," and "at subsequent hearings regarding the condition of the sexually violent predator." (AR 3; see slip opn., pp. 8-9.) As a result of that decision, the State has reimbursed counties for the costs incurred in performing these duties. The State's 2013-2014 budget, for example, appropriated $21.79 million to reimburse counties for the costs of carrying out the eight SVPA duties during 2011-2012. (AR 41.)

III. PROPOSITION 83

In 2006, the voters approved Proposition 83, a statewide ballot initiative. (See Prop. 83, as approved by voters, Gen. Elec. (Nov. 7, 2006).) The intent of Proposition 83 was "to strengthen and improve the laws that punish and control sexual offenders." (*Id.*, § 31.) Among other things, Proposition 83 expanded the population of offenders subject to the SVPA: it broadened the definition of "sexually violent predator" and removed the ceiling on the number of juvenile adjudications that could count as a "sexually violent offense." (Compare Welf. & Inst. Code, § 6600, subds. (a)(1), (g) with Welf. & Inst. Code, § 6600, subds. (a)(1), (g) as codified at Stats 2006, ch. 337, § 53.) Proposition 83 also amended four sections of the Welfare and Institutions Code, which contain six of the eight statutory duties that the Commission had previously determined to be state-mandated. (See Welf. & Inst. Code, §§ 6601, 6604, 6605, and 6608.) As required by the California Constitution, the Proposition "re-enacted as

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[2] "AR" stands for the Administrative Record. "JA" stands for the Joint Appendix filed in conjunction with the Counties' Opening Brief in the Court of Appeal.

amended" all four of those statutory sections. (Cal. Const., art. IV, § 9.)[3] Finally, Proposition 83 directed that "[t]he provisions of this act shall not be amended by the Legislature except by a statute passed in each house by a rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters." (Prop. 83, § 33.)[4]

STATEMENT OF THE CASE

In 2013, the Department of Finance asked the Commission to reconsider its 1998 mandate decision regarding the SVPA in light of Proposition 83. (See AR 31-131.) The Department of Finance argued that voter approval of Proposition 83 brought the eight statutorily mandated duties under Government Code section 17556, subdivision (f), which excludes from reimbursement those duties expressly included in, or necessary to implement, a voter-approved ballot measure. (See AR 37-40.) After briefing and public hearings, the Commission determined that six of the eight SVPA duties had become non-reimbursable, voter-imposed mandates as a result of Proposition 83. (See AR 602-672.)

The Counties of San Diego, Los Angeles, Orange, Sacramento, and San Bernardino sought review of the Commission's decision, filing a petition for a writ of administrative mandamus along with a complaint for declaratory relief in the superior court. (See JA 1-24; Code Civ. Proc, §§ 1094.5, 1060.) The superior court upheld the Commission's decision,

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[3] Article IV, section 9 directs that a "statute may not be amended by reference to its title. A section of a statute may not be amended unless the section is re-enacted as amended." (Cal. Const., art. IV, § 9.)

[4] That requirement is subject to an exception for amendments to "the provisions of this act to expand the scope of their application or to increase the punishments or penalties provided herein," which require only a "majority vote of each house." (Prop. 83, § 33.)

reasoning that voter approval of Proposition 83 constituted a subsequent change in law that modified the State's financial responsibility. (See JA 366-367.) It also rejected the Counties' arguments that aspects of the statutes governing test-claim determinations were unconstitutional. (See JA 366-368.)

The Counties appealed to the Fourth District Court of Appeal, Division One, which reversed in a published opinion. The threshold question addressed by the Court of Appeal was how to determine whether a voter initiative "converted the duties . . . that the Commission previously determined were state-mandated[] into duties that are instead mandated by the People," and therefore no longer reimbursable by the State. (Slip opn., p. 24.) The court viewed this as a "novel question" that is "not easily answer[ed]" by the relevant provisions of the Government Code. (*Id.* at p. 25.) Adopting a "narrow construction" of those provisions, the court held "that a ballot initiative that modifies statutes previously found to impose a state mandate only changes the source of the mandate if the initiative changes the duties imposed by the statutes." (*Ibid.*) In applying that rule, the court reviewed the sections of the Welfare and Institutions Code that the Commission had determined imposed state-mandated duties in its 1998 decision; compared their text as originally enacted and as re-enacted by the voters in Proposition 83; and asked whether the Proposition modified any of the specific language that the Commission had found to impose a duty. (See *id.* at pp. 26-29, 31.) Based on that comparative analysis of the statutory text, the court concluded that Proposition 83 "did not change any of the duties the law imposed on the Counties" and that the duties "were not affected by Proposition 83." (*Id.* at pp. 26, 29.) The court dismissed the argument that other changes to the law made by Proposition 83 could alter the State's financial responsibility by affecting the nature and scope of the SVPA duties. (*Id.* at p. 32.) It also rejected the argument that

the Legislature was no longer the source of those statutory duties that were re-enacted, in their entirety, by Proposition 83. (*Id.* at pp. 33-36.) After concluding that the SVPA duties remain state mandates notwithstanding the changes voters made to the law in Proposition 83, the Court of Appeal suggested that the Legislature remains free to suspend any or all of those mandates. (See slip opn., pp. 36-37.)

REASONS FOR GRANTING REVIEW

Review in this case is necessary to settle an important question of state mandates law. (See Cal. Rules of Court, rule 8.500(b)(1).) The State is only responsible for the cost of statutory mandates imposed by the Legislature or a state agency, and the Government Code recognizes that a mandate that was once reimbursable by the State may no longer be reimbursable after it is modified by a voter initiative. (See Gov. Code, §§ 17556, subd. (f), 17570, subd. (b).) By granting review in this case, the Court can definitively resolve the legal standard governing when financial responsibility for such a mandate shifts from the State to local governments, and avoid uncertainty that might otherwise result from the Court of Appeal's published opinion below.

I. THIS COURT SHOULD SET A CLEAR STANDARD FOR DETERMINING IF A VOTER INITIATIVE HAS SHIFTED FINANCIAL RESPONSIBILITY FOR A STATUTORY MANDATE

There is a pressing need for a clear decision from this Court on this issue for at least four reasons.

First, the questions presented by this case have profound consequences for the State budget—and for those of counties and local government agencies across the State. The annual costs associated with the SVPA duties in dispute here, for example, have exceeded $20 million in recent years. (See, e.g., AR 41.) Moreover, there are numerous statutory provisions, on a wide range of subjects, that have been determined to

impose reimbursable state mandates.[5] Given the volume of voter initiatives in this State, additional state mandates will surely be the subject of future initiatives. Clarity on this issue will give policymakers at the state and local level greater ability to predict whether such initiatives could shift costs from the State to local governments. But the Court of Appeal's rule threatens to create confusion on that subject. (See *post*, pp. 16-18.)

Second, a clear and definitive standard is also essential to the fair resolution of disputes over who must pay for the costs of statutory mandates. For example, Government Code section 17570, subdivision (b), one of the statutes construed by the Court of Appeal, defines when the Commission on State Mandates may adopt a new test-claim decision based on "a subsequent change in law." Absent review by this Court, the Court of Appeal's "narrow construction" of that provision (slip opn., p. 25) will inform future test-claim disputes before the Commission and the lower courts. This Court's review would ensure that, in future proceedings, the costs of complying with statutorily mandated duties that have been modified by a voter initiative are allocated in a manner consistent with the Constitution and the Government Code.

Third, the Court of Appeal's discussion of the Legislature's suspension authority is problematic. The Constitution authorizes the Legislature to suspend mandates it has imposed on local governments as an alternative to reimbursement (see Cal. Const., art XIIIB, § 6, subd. (b)), and that flexibility is a critical part of state mandates law. The Court of Appeal suggested that the Legislature remains free to suspend any or all of the SVPA mandates. (See slip opn., pp. 36-37.) That puts the Legislature in

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[5] See generally State-Mandated Programs, California State Controller <http://www.sco.ca.gov/ard_mancost.html> [as of Jan. 30, 2017].

the awkward position of either funding duties that have been substantially modified by the voters, or suspending them and potentially undermining a voter initiative. This Court can resolve that dilemma by adopting a standard that preserves the line between state mandates imposed by the Legislature and voter mandates imposed by a ballot initiative. (See Gov. Code, § 17556, subd. (f).)

Fourth, clear guidance from this Court is necessary to facilitate reliable analyses of the fiscal consequences of proposed initiatives. Before any proposed voter initiative is circulated for signatures, the Department of Finance and the Legislative Analyst are required to prepare an "estimate of the amount of any increase or decrease in revenues or costs to the state or local government" that would result from the initiative. (Elec. Code, § 9005, subds. (a)-(b).) The Attorney General must include a short description of that estimate along with the circulating title and summary for the initiative, (*id.*, § 9005, subd. (a)), and voters may rely on that estimate in deciding whether to sign a petition to put an initiative on the ballot. Similarly, for initiatives that appear on the ballot, the Legislative Analyst must prepare a fiscal analysis for the voter information guide. (*Id.*, § 9087, subd. (a).) Voters may rely on that analysis when they cast their ballots on Election Day. An accurate analysis necessarily entails consideration of whether the initiative would shift liability for the costs of any statutory mandate from the State to local governments.

In short, clear guidance from this Court would advance the interests of voters, local governments, and the State by facilitating accurate estimates and legal determinations regarding the fiscal consequences of voter initiatives. If this Court were instead to postpone review of the question, uncertainty arising from the Court of Appeal's opinion would persist, making it more difficult to determine whether an initiative shifts financial responsibility for state mandates from the State to local governments.

II. THE COURT OF APPEAL'S "NARROW" RULE IS INCONSISTENT WITH THE GOVERNMENT CODE

The need for review by this Court is heightened by the published opinion of the Court of Appeal, which adopted a rule that is inconsistent with the Government Code. The court concluded that the Government Code is "ambiguous" as to the "novel question" of "how the source of the mandate should be characterized when a statutory provision previously found to impose a state mandate is amended by a ballot initiative." (Slip opn., p. 25.) With little analysis or explanation, it "adopt[ed] a narrow construction of sections 17556, subdivision (f) and 17570," directing that "a ballot initiative that modifies statutes previously found to impose a state mandate only changes the source of the mandate if the initiative changes the duties imposed by the statutes." (*Ibid.*)

In applying that rule, the Court of Appeal made clear that the rule is focused exclusively on whether an initiative altered the statutory text describing a mandatory duty, and not on whether the initiative made other changes affecting the nature or scope of that duty. (See slip opn., pp. 26-29, 31.) For example, the court noted that Welfare and Institutions Code section 6601, subdivision (i), formed the basis of three of the mandated SVPA duties identified in the Commission's 1998 decision. (See *id.* at pp. 8, 26, fn. 9.) It rejected any argument that those duties were affected by Proposition 83—including by Proposition 83's expansion of the population subject to the SVPA—on the ground that "Proposition 83 amended only subdivision (k) of Welfare and Institutions Code section 6601" and did not alter the terms of subdivision (i). (*Id.* at p. 26, fn. 9.)

By focusing narrowly on whether an initiative changed the statutory subdivision imposing a duty, without any consideration of other statutory changes that could affect that duty, the Court of Appeal's rule conflicts with the Government Code. The Government Code directs that the costs of

complying with statutory duties are "not . . . mandated by the state" if the duties "are necessary to implement, or are expressly included in, a ballot measure approved by the voters in a statewide or local election." (Gov. Code, § 17556, subd. (f).) That language contemplates that altering the text of a statutory duty is not the only way a voter initiative can modify the State's financial responsibility for that duty.[6] If, for example, the initiative changes the surrounding law in a way that renders a duty "necessary to implement" the initiative, section 17556 directs that the costs of that duty are no longer reimbursable by the State. (*Ibid.*) The Court of Appeal ignored that possibility. It reasoned that "section 17556, subdivision (f), does not apply" unless the initiative modifies the specific statutory subdivision that has been found to impose a state mandate. (Slip opn., p. 29; *see, e.g.*, *id.* at p. 26, fn. 9.)

Equally troubling, the Court of Appeal's rule is in tension with the first principle of state mandates law: that the State is obligated to reimburse local government for the costs of a statutory mandate only if "the *Legislature*" has "mandate[d] a new program or higher level of service." (Cal. Const., art. XIIIB, § 6, subd. (a), italics added.) The constitutional obligation to reimburse does not apply if the source of a statutory mandate is the People. (See *California School Board Assn. v. California*, *supra*, 171 Cal.App.4th at p. 1206 ["The State's constitutional duty to reimburse local governments for mandated costs does not include ballot measure mandates"].) The Court of Appeal recognized this principle at the outset of its discussion, agreeing that "'[t]he source of authority that mandates the program or service determines whether the reimbursement requirement

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[6] Cf. *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776 ["An amendment is '. . . any change of the scope or effect of an existing statute . . . .'"].

under [article XIIIB, section 6, subdivision (a)] applies." (Slip opn., pp. 24-25.) But the court's rule, focusing only on whether the initiative alters the text directly imposing the mandated duty, ignores other ways in which a voter initiative could change the "source" of the duty from the Legislature to the voters. To take just one example, a voter initiative could preserve the text of a statutory mandate that was originally enacted by the Legislature, while prohibiting the Legislature from repealing or amending that mandate. (Cf. Cal. Const., art. II, § 10, subd. (c).) In that scenario, it would not be fair or reasonable to conclude that the Legislature remained the "source" of the mandate. Under the Court of Appeal's approach, however, the State would apparently remain responsible for the costs of complying with that mandate.

III. THE COURT OF APPEAL'S RULE LED IT TO THE WRONG RESULT IN THIS CASE

The Court of Appeal's "narrow" rule led it to the wrong result in this case. Although Proposition 83 did not materially alter the statutory text describing the specific SVPA duties, it did change the law in ways that modified the State's financial responsibility for those duties. Among other things, Proposition 83 expanded the population of offenders that the Director of State Hospitals "shall" refer to the counties, triggering the duties mandated by the SVPA. (See Welf. & Inst. Code, § 6601, subd. (h)(1).) It did so by broadening the definition of "sexually violent predator"—reducing the required number of victims from "two or more" to "one or more"—and by removing the ceiling imposed by the Legislature on the number of juvenile adjudications that could count as a "sexually violent offense." (Compare Welf. & Inst. Code, § 6600, subds. (a)(1), (g) with Welf. & Inst. Code, § 6600, subds. (a), (g) as codified at Stats 2006, ch. 337, § 53.) Those changes substantially enlarged the population of offenders for whom the counties must perform the required SVPA duties. (See AR 678

[legislative analysis observing that Proposition 83 "generally makes more sex offenders eligible for an SVP commitment"].)[7] The increase in the number of offenders subject to the SVPA logically creates the potential for a corresponding increase in the cost of the SVPA mandates to the State. Furthermore, Proposition 83 insulated those (and other) modifications from revision by the Legislature, directing that they "shall not be amended by the Legislature except by a statute passed in each house by a rollcall vote entered in the journal, two-thirds of the membership of each house concurring." (Prop. 83, § 33.) The changes made by Proposition 83 to the SVPA transformed the nature and scope of the duties the SVPA imposed on counties, in ways that cannot be unwound by the Legislature through its normal process, rendering the duties no longer reimbursable under Government Code section 17556, subdivision (f).

But the Court of Appeal's rule caused it to dismiss the relevance of those modifications out of hand. For example, it rejected the argument that Proposition 83 modified the State's responsibility for the costs of SVPA duties by broadening the definition of sexually violent predator in Welfare and Institutions Code section 6600. (See *id.* at p. 32.) In the court's view, that argument failed merely because "section 6600 was not a basis for any

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[7] Indeed, a 2012 report by the Department of Mental Health suggests that Proposition 83, in combination with other changes to the law made in 2006, increased the number of inmates referred by the Department of Corrections and Rehabilitation as possible "sexually violent predators" by "nearly 800 percent," from 50 per month to over 600. (JA 247.) The parties dispute whether the superior court properly took judicial notice of that report, and the Court of Appeal noted that the report did not indicate whether the increase in referrals has affected costs at the county level. (See slip opn., p. 32, fn. 14.) It is beyond dispute, however, that the contours of the statutory term "sexually violent predators" were materially expanded by the voters in Proposition 83, as part of the voters' effort "to strengthen and improve the laws that . . . control sexual offenders." (Prop. 83, § 31.)

of the duties for which the Counties sought reimbursement." (*Ibid.*) In other words, the court held that because the definition of "sexually violent predator" was not in the same statutory section as the provisions directing how the counties must process offenders who meet that definition, any change to that definition was irrelevant as a matter of law. (Cf. *ibid.* ["Likewise, the initiative's amendment clause did not impact any of the duties imposed by the SVPA or change the source of the mandated duties"].) That is just one illustration of how the court's rule invites mischief, by directing courts to ignore whether a voter initiative has modified the statutory framework in ways that transform the nature of a mandatory duty.

Other aspects of the Court of Appeal's analysis are also likely to create confusion. The court rejected the argument that Proposition 83 eliminated the State's financial responsibility for duties contained in statutory sections that were "re-enacted" in their entirety by Proposition 83 (as required by article IV, section 9 of the California Constitution), reasoning that a "technical reenactment" cannot "change[] the source of a mandate." (Slip opn., p. 35; see *id.* at pp. 33-35.) That reasoning appears to be in tension with at least one other Court of Appeal opinion, which reasoned that when a statutory section was amended by a voter initiative, "it was actually re-enacted in its entirety as amended," such that "any subsequent amendment to any portion of" the section "would require approval of the voters to be effective" except insofar as the voters expressly authorized legislative amendment. (See *Shaw v. People ex rel. Chiang* (2009) 175 Cal.App.4th 577, 597 (maj. opn. of Cantil-Sakauye, J.).)

Moreover, as noted above, the Court of Appeal's opinion suggests that the Legislature may simply suspend any or all of the SVPA duties, even after they were modified by Proposition 83. (See slip opn., pp. 36-37; *ante*, pp. 14-15.) The court's discussion of this issue reflects an important principle of state mandates law: the constitutional requirement that the